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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/082,956

02/26/2002

John W. Putnam

02-216

7018

7590            04/28/2003

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[REDACTED] EXAMINER

GORR, RACHEL F

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

1711

DATE MAILED: 04/28/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/082,956	PUTNAM ET AL. <i>g</i>
	Examiner	Art Unit
	Rachel F. Gorr	1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 March 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 4-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

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1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 4-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-6 of U.S. Patent No. 6,420,509. Although the conflicting claims are not identical, they are not patentably distinct from each other because see Paper No. 4, paragraph 2.

3. Applicant's arguments filed 3-31-03 have been fully considered but they are not persuasive. The applicants argue that the examiner hasn't shown why it would be obvious to not require the volumetric ratios in this application. The broad claims of this application read on any kind of ratio. If the patent (509) were a reference in a rejection, the claims would be rejected under U.S.C. 102.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

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5. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gajewski in view of Ulrich.

See Paper No. 4, paragraphs 5-7.

6. Applicant's arguments filed 3-31-03 have been fully considered but they are not persuasive. The applicants argue that Gajewski doesn't show liquid components. The prepolymer blend of Gajewski is the same as the applicants' prepolymers. The Brown reference teaches that the Ethacure amine blend used by Gajewski is a liquid (see the first page of Brown under the publication to Albemarle). The applicants argue that Ulrich doesn't show the polyurethane components of the claims in the amounts of the claims. The claims don't specify any amount. Gajewski teaches the prepolymer and amine of the claims and discloses diphenylmethane diisocyanate(MDI) in a limited list. It's been held obvious to choose one from a limited list.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by

Gillis.

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also used a blocked Jeffamine, which is a liquid per Pocius (col. 6, lines 38-41, lines 56-58). The prepolymer of Gillis would be liquid because it's the same as the applicants' prepolymer, and the NCO amount falls within the ranges specified in the claims.

**10. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel F. Gorr whose telephone number is 703-308-3608. The examiner can normally be reached on Mon., Tues., Thurs., Fri., from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

R.G.  
April 25, 2003

*Rachel Gorr*  
**RACHEL GORR**  
**PRIMARY EXAMINER**

<b>Notice of References Cited</b>		Application/Control No.	Applicant(s)/Patent Under Reexamination PUTNAM ET AL.	
		10/082,956	Examiner Rachel F. Gorr	
		Art Unit 1711		Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,718,977	02-1998	Pocius	
	B	US-6,127,505	10-2000	Slagel	
	C	US-6,509,434	01-2003	Brown et al.	
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages
	U	